

1 W. H. Jennings 181
 2 netted with other items and booked in
 3 the partners distribution. Is that an
 4 acceptable practice for Dalton?
 5 A Not based on its face what you're
 6 telling me.
 7 Q Water and sewer recorded on the
 8 auditor's adjusting journal statement
 9 reported zero dollars but as in the
 10 first example the amount is netted with
 11 other amounts and recorded as a
 12 distribution?
 13 A That makes absolutely no sense to
 14 me.
 15 Q Well, if again, the water and
 16 sewer charge was netted and put in zero
 17 dollars a distribution column would that
 18 not tend to distort account balances?
 19 A Well, it depends on what the
 20 facts and circumstances are. If the
 21 facts and circumstances are deemed to be
 22 that they're looking at 2007 and these
 23 are adjustments for 2006 then it is
 24 possible because he closed out the P and
 25 L, the profit and loss, as I've stated

1 W. H. Jennings 182
 2 several times before, to this
 3 distribution account which he deemed to
 4 equate to a capital account which in my
 5 mind if that is the case it distorts
 6 nothing.
 7 If you're telling me that for
 8 that year that there was absolutely no
 9 water and sewer expense on the books and
 10 records then I would have issue with it
 11 but I think you're mixing up the fact.
 12 Based on what you're telling me now it
 13 appears that Mr. Dawley is making the
 14 adjustments in a subsequent year.
 15 Q Again, if these things are being
 16 made in a subsequent year why wouldn't
 17 he be able to print the detail of the
 18 current year?
 19 A If you have the general ledger
 20 and you have the adjustments in your
 21 possession then there should be no
 22 question as to where these expenses
 23 went.
 24 Q But if the general ledger does
 25 not contain all of the proposed journal

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1 W. H. Jennings 183
 2 entries then you'd be totally lost,
 3 right?
 4 A No, not at all.
 5 Q Well, you'd have to see his
 6 financial statement, you'd have to see
 7 the audit report.
 8 A The audit report is the final
 9 document. That is the report. You
 10 start with the general ledger, a trial
 11 balance is taken off, and adjustments are
 12 proposed and if they are accepted those
 13 adjustments are made to the trial
 14 balance to arrive in a financial
 15 statement. And if you have those
 16 documents, the general ledger and the
 17 adjusting journal entries it's very easy
 18 to have a trial as to what transpired.
 19 Q But the problem that these
 20 accountants had was that Dalton had no
 21 evidentiary information to support the
 22 changes, that they were just being
 23 presented as a fait accompli, as a done
 24 deal. They were just being, well, this
 25 is what it is to Dalton and Dalton

1 W. H. Jennings 184
 2 didn't seem to know why, how, where nor
 3 did they appear to care what was being
 4 done with these journal entries; isn't
 5 that the case?
 6 A I'd have to defer to Orley. I
 7 mean the fact that he wouldn't produce
 8 mortgage documents that are in his
 9 possession.
 10 Q But you don't know them to be in
 11 his possession?
 12 A They have to be in his
 13 possession.
 14 Q They should be in his possession,
 15 we all agree on that, right?
 16 A Otherwise they wouldn't have a
 17 copy of the important pages.
 18 Q Is there a likelihood that they
 19 simply passed that material onto Marks
 20 Paneth & Shron and let you sort it out?
 21 A Absolutely not.
 22 Q Well, with the dearth of
 23 information that the accountants have
 24 testified to that Dalton had or at least
 25 said it had in its possession and with

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1 W. H. Jennings 185
 2 its willingness to just pass any request
 3 onto Marks Paneth & Shron and with your
 4 compliance in responding to these
 5 requests would it at some point suggest
 6 or infer that Dalton really wasn't in
 7 the business of keeping these materials?
 8 A No.
 9 Q They certainly weren't keeping it
 10 well.
 11 A That's a matter of opinion. My
 12 belief is that they had the documents.
 13 They were keeping them and it's not my
 14 only client who defers to the
 15 accountants because it's much easier to
 16 call up an accountant and say, "produce
 17 this document for me. I need you to send
 18 it to XYZ," rather than the typical
 19 excuse is, "I don't want to go to my
 20 file."
 21 Q In point in fact the process of
 22 such it becomes much easier to let the
 23 auditors do the accounting; doesn't it?
 24 A No.
 25 Q When an excessive, if it is

1 W. H. Jennings 186
 2 excessive, number of journal entries are
 3 made by an auditor and the general
 4 ledger is rendered irrelevant to the
 5 final statement, at what point do we
 6 conclude that it is the auditor doing
 7 the accounting and not Dalton
 8 Management?
 9 A It may be a deficiency in
 10 internal control but it's not accounting
 11 or bookkeeping, if that's what you're
 12 inferring.
 13 Q The experience reported by
 14 Cameron, Griffiths & Pryce suggests that
 15 there was no control at Dalton on any of
 16 this and that all of it was being given
 17 to Marks Paneth & Shron and that Marks
 18 Paneth & Shron was doing it?
 19 MR. TRAUB: Can we mark that
 20 report as an exhibit?
 21 MR. HAYWOOD: I'm sorry?
 22 MR. TRAUB: Can we mark that
 23 report as an exhibit?
 24 MR. HAYWOOD: I will
 25 certainly make it available to

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1 W. H. Jennings 187
 2 you. I don't want to mark it on
 3 the record but I will make it
 4 available to you because we had
 5 it classified as a work product
 6 but I have no problem giving it
 7 directly to counsel. I don't see
 8 any reason why it should be in
 9 this record because he's
 10 testified about it.
 11 MR. TRAUB: I just want to
 12 state that we've asked for that
 13 in our discovery request. That
 14 was also the subject of our
 15 deficiency letter and Judge
 16 Francis' subsequent order and we
 17 still have not received the
 18 report that you just referred to.
 19 MR. HAYWOOD: Well, this is
 20 work product.
 21 MR. TRAUB: The work product
 22 of the accounting firm is the
 23 exact subject matter of this
 24 entire complaint and you can't
 25 then hide behind work product.

1 W. H. Jennings 188
 2 when you're referring to reports
 3 of the accountants that have
 4 started this entire complaint.
 5 It's not work product.
 6 MR. HAYWOOD: Well, I'm
 7 certainly going to provide it to
 8 you.
 9 MR. TRAUB: Okay.
 10 MR. HAYWOOD: I disagree with
 11 you. I think it's work product
 12 as we specifically requested that
 13 it has specific items but however
 14 that is I have no objection to
 15 providing you with copies of it.
 16 Q The fact that the consulting
 17 monies raised on these contracts, on
 18 these consultant fees and what not, so
 19 far exceed the audit fees, do you see
 20 that as tending to work against
 21 independent analyses?
 22 A No.
 23 Q And the fact that there are
 24 fourteen such developments and possibly
 25 others concerned with this client

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1 W. H. Jennings 189
 2 generating what you recall to be
 3 \$300,000 a year, though it sounds like a
 4 little more than that, that doesn't
 5 create the tendency in Marks Paneth &
 6 Shron to go beyond its normal
 7 obligations and to do things that
 8 otherwise might not have been done?
 9 A Absolutely not.

10 Q Now, did it come to your
 11 attention that Cameron, Griffiths &
 12 Pryce found that Dalton Management takes
 13 no responsibility for the excessive
 14 journal entries recorded for each
 15 partnership and that when asked to
 16 explain they simply responded the
 17 auditor made those entries and will have
 18 to explain them; did that come to your
 19 attention that Dalton was saying that?

20 A No, because we have a management
 21 representation letter that says just the
 22 opposite.

23 Q And that Mr. Dawley stated to
 24 Cameron, Griffiths & Pryce that the
 25 reason he can't trace the journal

1 W. H. Jennings 190
 2 entries to the general ledger is that he
 3 booked them against the distribution
 4 accounts?

5 A But again, if he's referring to
 6 the prior year journal entries he's
 7 closing out the profit and loss and
 8 that's how he's recorded these journal
 9 entries.

10 Q Did it come to your attention
 11 that Cameron, Griffiths & Pryce saw no
 12 indication on the journal entries that
 13 Dalton approved any of the entries which
 14 were made by the auditor?

15 A I have to look at the management
 16 representation letter.

17 Q Now, directing your attention to
 18 Church Home, in the money market account
 19 carrying a balance of \$49,614 after
 20 Dalton wrote a check for \$322,221
 21 representing a distribution made to the
 22 partners. The check was taken from one
 23 account and was deposited in an account
 24 called Church Home Associates Two. Are
 25 you familiar with such an account?

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1 W. H. Jennings 191
 2 A Yes.
 3 Q How many accounts does Church
 4 Home maintain?

5 A There's an operating account and
 6 there's a distribution account.

7 Q As it was not recorded in the
 8 general ledger it was not subject to
 9 audit testing and Dawley said he had no
 10 access to this bank statement.

11 A The statement is not true.

12 MR. KELLY: Wait for him to ask
 13 a question, then answer.

14 Q So that in your opinion Dawley
 15 did have access to that statement?

16 A Yes.

17 Q But as a matter of propriety in
 18 doing things right it is a fact, is it
 19 not, that all transactions pertaining to
 20 the partnership ought to be in the
 21 general ledger, that is a fact; is that
 22 correct?

23 A Yes.

24 MR. TRAUB: I'm just going to
 25 go back on the record again and

1 W. H. Jennings 192
 2 just state that if you were just
 3 reading from the report of
 4 Cameron, Griffiths & Pryce that
 5 that report was supposed to have
 6 been produced on Friday and if
 7 you have it here we would like a
 8 copy before we leave.

9 MR. HAYWOOD: Darren, I take
 10 exception to your statement that
 11 it should have been produced on
 12 Friday, but as I say, I'm going
 13 to produce them to you right now.

14 MR. KELLY: Thank you.

15 MR. HAYWOOD: Let's mark this
 16 and this page and then we'll make
 17 copies of this report.

18 (Caanan IV distributions for
 19 year ending 12/31/06 was
 20 marked as Plaintiffs' Exhibits
 21 10 for identification, as of
 22 this date.)

23 (Logan Plaza Associates
 24 adjusting journal entries
 25 report was marked as

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1 W. H. Jennings 193

2 Plaintiff's Exhibit 11 for
 3 identification, as of this
 4 date.)

5 Q Mr. Jennings, I show you Exhibit
 6 10. With regards to Caanan IV the
 7 document recites a distribution which
 8 shows a total of \$312,221.01 and the
 9 document did not go through the general
 10 ledger. This came out of the Caanan II
 11 account but it came out of the Caanan II
 12 account as \$322,221, you may recall.
 13 What happened to the other \$10,000 for
 14 purposes of this distribution, if you
 15 know?

16 A \$10,000 according to the
 17 partnership agreement is a fee paid off
 18 the top as a general partner fee. The
 19 distributions on Caanan IV are limited
 20 to surplus cash for the prior year. The
 21 regulations require them to do a surplus
 22 cash computation every year. They
 23 cannot distribute more than the surplus
 24 cash. If these payments were indeed
 25 made in 2006, that means you would look

1 W. H. Jennings 194

2 at the 2005 financial statement and see
 3 what the surplus cash was determined,
 4 was certified to.

5 \$322,000 rings a bell with me so
 6 of the \$322,221 pursuant to the
 7 partnership agreement, the surplus cash
 8 how they distribute it there are no
 9 restrictions, according to HUD. Once
 10 that surplus cash is due to the partners
 11 they may have a responsibility to pay it
 12 to the partners but they can do anything
 13 they want with it.

14 In this case the \$10,000 in the
 15 partnership agreement is, and this is
 16 very common practice, the \$10,000 comes
 17 off the top of the surplus cash, the
 18 \$322,000 is paid to the general partner
 19 as a general partner fee. The balance
 20 is distributed in accordance with the
 21 profit and loss percentage to the
 22 limited partners.

23 MR. TRAUB: Mel, can we just
 24 clarify on the record whose
 25 handwriting the middle is, if you

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2 know.

3 MR. HAYWOOD: I have no idea.
 4 I'm going to assume that it was
 5 one of the people who handled
 6 these inquiries for us.

7 MR. TRAUB: I just wanted to
 8 make sure that it wasn't a Seavey
 9 handwriting or a Marks Paneth &
 10 Shren.

11 MR. HAYWOOD: It may have
 12 been some of the people in my
 13 office. I can't be sure.

14 MR. TRAUB: Okay, thank you.

15 Q Now, let's see, in Exhibit 11,
 16 Mr. Jennings, --

17 MR. KELLY: Exhibit 11 hasn't
 18 been given to the witness yet.

19 Q There is from Logan Plaza, and we
 20 raised this earlier, a distribution
 21 listed as \$665,185, yet the actual
 22 distribution made to the partners for
 23 Logan in 2006 was \$260,000 of which John
 24 admits to have and the Seavey interest
 25 took the other half. How does the

1 W. H. Jennings 196
2 distribution read \$665,185 when in point
3 in fact it only shows \$260,000 being
4 paid up?

5 A If you had been in my profession
 6 you would know that it's a credit to
 7 distribution therefore it couldn't have
 8 been a distribution because if it was a
 9 distribution it would have had a debit
 10 balance. So first of all, let's --

11 Q Let me stop you for a second.

12 So that you mentioned something
 13 called a credit distribution and that is
 14 different, I believe, in kind from a
 15 distribution; is that correct?

16 A Incorrect.

17 Q Okay, go ahead.

18 A This is what we discussed several
 19 times before. As a matter of fact, you
 20 brought this up. Why do they charge
 21 these expenses to distributions?
 22 Because when they close out the prior
 23 year it appears that they charge
 24 everything to a distribution account.
 25 This is a close out of the distribution.

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1 W. H. Jennings 197
 2 This came from your examination. Why
 3 these charges --
 4 Q Let me stop you again. Are you
 5 saying that Dalton did this?
 6 A Dalton did what?
 7 Q Marked this distribution as
 8 \$665,000 or is that something Marks
 9 Paneth & Shron did?
 10 A It's not a distribution. This is
 11 accounting.
 12 Q Who structured it in this way;
 13 Dalton or Marks Paneth & Shron?
 14 A These are all capital counts. If
 15 you look at partners capital, retained
 16 earnings, distribution, accumulated
 17 income at loss, partners capital, rent
 18 income apartments, these are all capital
 19 accounts. This is what I referred to
 20 before. To agree the prior year's
 21 capital when Mr. Dawley, and I'm making
 22 an assumption, closes out the prior year
 23 profit loss he charges it to a
 24 distribution account. We discussed this
 25 before. When we see that we're required

1 W. H. Jennings 198
 2 to correct that to make it a partners
 3 capital account. That's all that is.
 4 Q When you see it you make the
 5 automatic signal to say well, this has
 6 to go onto a capital account for
 7 purposes of closing it out?
 8 A We propose -- these are
 9 corrections --
 10 Q You propose it?
 11 A Correct. This is a correction
 12 entry. This is not a cash flow issue.
 13 Q No, it has nothing to do with the
 14 actual cash flow.
 15 A It has nothing to do with cash
 16 flow.
 17 Q It only looks like it's money but
 18 it says distribution.
 19 A Well, as soon as I saw it, I see
 20 it's a credit, I know it's not that.
 21 Q So that's that.
 22 Let me just take a second here
 23 because I want to find my depositions.
 24 (A notice to produce with
 25 first interrogatories failures

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1 W. H. Jennings 199
 2 to respond was marked as
 3 Plaintiff's Exhibit 12 for
 4 identification, as of this
 5 date.)
 6 MR. HAYWOOD: Let the record
 7 reflect that a document which
 8 I've just received which is dated
 9 12/12/2007, generated and
 10 designated as attorney's work
 11 product is being given to Mr.
 12 Traub and Mr. Kelly at Mr.
 13 Traub's request and I don't
 14 object to it except to say that
 15 although it's work product
 16 there's every reason why it
 17 should be surrendered.
 18 MR. TRAUB: And we appreciate
 19 the turnover. I just want to
 20 point out that it is directed to
 21 Logan Plaza Associates, Fifth and
 22 106th Street Associates, Charles
 23 Hill Housing and Church Home
 24 Associates and the very first
 25 sentence of the second paragraph

1 W. H. Jennings 200
 2 says this report is intended
 3 solely for the information and
 4 use of management and others
 5 within the organization. If you
 6 go to management that would
 7 certainly be the Seaveys and
 8 Dalton Management and those
 9 within the organization being
 10 these four so we dispute it being
 11 work product but at the same time
 12 it appears to be a non issue now
 13 since you've turned it over.
 14 MR. HAYWOOD: Well, there's a
 15 question of who hired Cameron,
 16 Griffiths & Pryce but I haven't
 17 displeased you; have I?
 18 MR. TRAUB: Like I said --
 19 MR. HAYWOOD: And I say
 20 again, it's my practice that many
 21 things, personal injuries,
 22 whatever else, I don't withhold
 23 documents that are relevant to
 24 the issue. Let's see it. And so
 25 much for that. But you are an

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1 W. H. Jennings 201
 2 excellent counsel, sharp eyes and
 3 intellect.
 4 MR. TRAUB: I'm glad that's on
 5 the record because I plan to show
 6 that in my review at the end of
 7 the year.
 8 MR. HAYWOOD: Why not?
 9 MR. TRAUB: I may even ask you
 10 to notarize that sentence.
 11 MR. KELLY: Can we go off the
 12 record, please?
 13 (Whereupon, a brief discussion
 14 was held off the record.)
 15 MR. HAYWOOD: Let the record
 16 show that this is a document
 17 previously served on both
 18 attorneys, the name of which is
 19 notice to produce with first
 20 interrogatories. failures to
 21 respond.
 22 MR. KELLY: Do you have pages
 23 one through five, by any chance?
 24 They don't seem to be attached.
 25 MR. HAYWOOD: No, they're not

1 W. H. Jennings 202
 2 because they are the introductory
 3 material. You have them.
 4 MR. TRAUB: Can we just put
 5 the first page, the cover sheet
 6 on? I'm okay without pages two
 7 through five but if we could at
 8 least just do the cover sheet I
 9 think that would --
 10 MR. HAYWOOD: Certainly.
 11 MR. TRAUB: We can move
 12 forward while they're copying
 13 that. I don't think that's going
 14 to mess anything up.
 15 Q: Mr. Jennings, on July 1 we sent a
 16 request for a notice to produce
 17 interrogatories to all counsel. It was
 18 sent back because we had mentioned or
 19 there was language in it that referred
 20 to another case in the introductory
 21 portion and resubmitted it, I recall,
 22 sometime around July 23 although that
 23 may not be correct and it was presented
 24 to Judge Baer and I believe that was
 25 September 16th or 18th at the scheduling

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1 W. H. Jennings 203
 2 conference.
 3 MR. TRAUB: I'm not sure what
 4 the exact date is but somewhere
 5 around there. That sounds fine.
 6 Q: And it recited, you will see, the
 7 questions we've asked and it recited the
 8 unreadiness that we had with the
 9 responses. I just want to go through
 10 them to see if you might supply or know
 11 the answers to any of these questions.
 12 On page six, where it says,
 13 "produce," we asked for copies of all
 14 reports related to REAC inspections for
 15 each of the developments covering the
 16 last five years with all attendant
 17 memorandae and communications.
 18 Are you in possession of any
 19 information concerning these REAC
 20 inspections and evaluations of these
 21 buildings, of the four buildings?
 22 A: We are required to as part of our
 23 audit process.
 24 Q: Are you able to provide full
 25 documents concerning the history of the

1 W. H. Jennings 204
 2 REAC circumstance of whatever's going on
 3 there?
 4 A: Yes.
 5 MR. HAYWOOD: I would request
 6 of Mr. Kelly that they be
 7 submitted.
 8 MR. KELLY: If I just may ask
 9 my client a question?
 10 (Whereupon, a brief discussion
 11 was held off the record.)
 12 MR. KELLY: I'm ready to
 13 continue.
 14 Q: And I call your attention to the
 15 fact that in the underlying part where
 16 we cite our un-readiness we say only the
 17 original findings were produced with no
 18 reinspection or follow up for Lakeview.
 19 No documents were presented, it says
 20 indicting but it means indicating any
 21 curing of the defects in the wake of the
 22 HUD findings.
 23 MR. HAYWOOD: Whenever you
 24 have that you can produce it. We
 25 will call for the production. The

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1 W. H. Jennings 205
 2 same thing of Darren Traub. If
 3 you both have anything more on
 4 REAC, if I could see it.
 5 Q These were submitted to
 6 Magistrate Francis, but I guess when we
 7 said that it would be addressed at
 8 depositions he said, "well, fine, do the
 9 depositions but we can save some time
 10 too if you have the documents."
 11 The next one is 2; security
 12 payroll, \$100,368 paid in 2006. Account
 13 number 6530. No security contract was
 14 produced and it's paid presumably to a
 15 licensed company without benefit of a
 16 written contract. If you have such a
 17 contract, either of you, I would like to
 18 see it. We have a detective agency, a
 19 security company that functions here and
 20 we won't go near the water without a
 21 contract and I'm curious as to who did.
 22 And were they licensed?
 23 Number 4; workers compensation
 24 insurance policy of \$12,000 paid in
 25 2006. The actual bill for the policy is

1 W. H. Jennings 206
 2 \$9,084.60. If there's some explanation
 3 for it we would like to see it.
 4 Number 5; building and liability
 5 insurance. Were any excess premiums
 6 returned? What are the names of the
 7 brokers involved? Provide checks and
 8 face sheet of policies for which it is
 9 alleged prepayments were paid. The
 10 general ledger entries are not
 11 consistent with documents produced in
 12 response to this request. If there's an
 13 answer, we'd like to get it.
 14 Number 6; support for item number
 15 1590, account number 1590, utility
 16 deposit for \$4,205. No canceled checks
 17 are produced in support of this amount.
 18 MR. KELLY: Excuse me for
 19 interrupting but are you asking
 20 this particular witness any
 21 questions or are you just --
 22 MR. HAYWOOD: Yes, yes. The
 23 question being that if you have
 24 any these items or if Mr. Traub
 25 has them, we'd like to see them

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1 W. H. Jennings 207
 2 since July 1st.
 3 Q There is also a figure of
 4 \$261,639. No canceled checks or other
 5 support is offered in verification of
 6 this expense. I see it's listed as
 7 1900, other assets.
 8 Then account 040-2150, accrued
 9 real estate tax payable \$37,000.
 10 MR. TRAUB: Mel, can we just
 11 stipulate that your question is
 12 going to be to the extent that
 13 the witness has any of the stuff
 14 identified in Plaintiff's Exhibit
 15 12 that you want him to produce
 16 it.
 17 MR. HAYWOOD: All right.
 18 Q No check or statement is provided
 19 to support this expense.
 20 MR. HAYWOOD: Off the record.
 21 (Whereupon, a brief discussion
 22 was held off the record.)
 23 Q There's an expense on account
 24 payable, account number 040-2110, \$6,747
 25 and no support was offered or provided

1 W. H. Jennings 208
 2 for this and once again we've made three
 3 or four requests for the original
 4 agreement for the note payable to Robert
 5 Seavey of \$29,915.16.
 6 MR. HAYWOOD: Off the record.
 7 (Whereupon, a brief discussion
 8 was held off the record.)
 9 Q We want any support for this.
 10 And the other question is why was it
 11 necessary to borrow the money from the
 12 corporation or for him to advance the
 13 money on behalf of the corporation which
 14 is the main question, given the fact
 15 that it had a positive cash flow.
 16 That's what everybody had a question
 17 about. That's number one and number two.
 18 --
 19 MR. KELLY: Hold on. Is that
 20 a question you want him to try to
 21 answer right now?
 22 MR. HAYWOOD: Well, can he?
 23 A My knowledge of this is it's a
 24 misclassification on the general ledger.
 25 There is no note payable to Robert

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1 W. H. Jennings 209

2 Seavey for \$29,915 that I'm aware of.

3 Q So you're saying that Dalton put
4 that in the general ledger by accident?5 A Their general ledger shows loan
6 payable general partner. That's where
7 that amount shows up and it is not a
8 loan payable to the general partner.

9 Q Is someone collecting payments?

10 A It has something to do with a
11 section 32 advance under the mortgage
12 that was advanced about probably twelve
13 or fifteen years ago. It was under the
14 materiality limits so we never looked
15 into it.16 Q Well, I can't imagine anyone but
17 Bob Seavey collecting the payment but
18 maybe he'll tell us more.19 We've covered the information in
20 number two about the payment of \$108,000
21 under the Marks Paneth & Shrón contract.22 We've asked for the general
23 ledger trial balance reflecting twelve
24 months of transactions for any of the
25 developments from 2006 and 2007 and we

1 W. H. Jennings 210

2 say that the trial balances are not
3 reflected rendering any audit extremely
4 difficult in violation of basic
5 accounting principles and standards. So
6 if somebody's got a book out there for a
7 general ledger for Dalton that has trial
8 balances we'd like to see that book and
9 not the one they pretend to keep, my
10 editorial statement.11 Citibank account \$1,781, not
12 provided. Explanation for prepaid
13 expenses of \$17,448.25 under 100-1200
14 not provided.15 Support for the prepaid real
16 estate tax of \$443,810.76 account 100-
17 1200, no checks are provided in support
18 of the payment, only printouts from the
19 Department of Finance with inconsistent
20 figures.21 Support for the prepaid water
22 sewer of \$333,702.13 account 100-1230,
23 no support tendered for the claim.
24 17; explanation and support for the
25 deferred operating expenses ofLEX REPORTING SERVICE
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1 W. H. Jennings 211

2 \$179,338.03 account 100-1540, no
3 support, details or names of brokers is
4 provided.5 An expenditure of \$383,872, no
6 invoices were presented or checks to
7 confirm the expenditure. No checks
8 provided as proof of payment of the
9 account.10 Under 21, a general liability and
11 commercial property insurance policy and
12 premium for June 2005 to June 2007.13 Policy is presented but the premium
14 shown does not square with the general
15 ledger.16 Twelve month statements for the
17 money market account-GL account number
18 1115. Also provide the verification
19 contact, the bank address and contact
20 name and telephone number. Nothing was
21 produced in response to this request.22 Detailed schedule for the
23 distribution of \$322,221, you addressed
24 that here. Number two response to that
25 request for \$322,000, that's satisfied.

1 W. H. Jennings 212

2 5; the 2006 audited financial
3 statement disclosed management fees
4 earned of \$76,588. The GL, on the other
5 hand, recorded cash disbursed totaling
6 \$103,323. Please explain and document
7 the journal entries for the difference.
8 Nothing was produced. And the mortgage
9 note and closing statement supporting
10 the mortgage costs, no explanations are
11 provided, and we discussed this before,
12 for the expenses charged which appear
13 co-mingled with unrelated management
14 consultant accruals. Where was the
15 royal abstract refund of excess payment
16 check in the amount of \$29,585.31,
17 deposited by management and how was it
18 employed? Please provide all written
19 requests for payments to Marks Paneth &
20 Shrón in excess of \$5,000 of the fees
21 charged for auditing, if there are any
22 and we've covered that before.23 Now, regarding Logan Plaza we
24 talk about the \$665,185 that you just
25 testified to, Mr. Jennings, and theLEX REPORTING SERVICE
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1 W. H. Jennings 213

2 \$925,000 is claimed as capital
 3 distribution when the actual sum was
 4 \$260,000 and you've addressed it.

5 Personnel files to determine how
 6 and who at Dalton Management is paid by
 7 these four developments and why off side
 8 people are being paid requested for:
 9 Michael Hill, Joyce Murphy, Cheryl
 10 Labelle, Alonzo Rodgers, Joan Mondesir,
 11 David Givens and Ronald Dawley. Nothing
 12 has been produced.

13 And here's our famous question
 14 about the ownership interest of the
 15 various parties and we're before Judge
 16 Francis and the statement is that we
 17 haven't given specific answers but I
 18 note that since July 1st no definitive
 19 response was provided to our requests
 20 setting forth stately the ownership
 21 interest, though, Darren Traub, you did
 22 give to me the statements indicating the
 23 possibility that Mr. Edmonds' interest
 24 might be reduced.

25 MR. TRAUB: And I think we did

1 W. H. Jennings 214

2 give you a handwritten statement
 3 that our production, specifically
 4 with regards to E 1 on page 12.
 5 I will state definitively that it
 6 was in our document production.

7 MR. HAYWOOD: At some point
 8 we're going to ask that the
 9 papers be produced and we're
 10 going to ask that it be
 11 individuated out if it's
 12 possible, and produced.

13 MR. TRAUB: It's different
 14 than that. It's a handwritten
 15 chart. As a matter of fact, I
 16 know it was in there because I
 17 actually put it on top of the
 18 entire box but to make it easier
 19 I'll see if I can easily locate
 20 it and if I can I will produce it
 21 individually.

22 MR. HAYWOOD: I appreciate
 23 that and hopefully we will work
 24 out all those other concerns.

25 Q. I'm out except for this, Mr.

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1 W. H. Jennings 215

2 Jennings, with regards to the four
 3 developments, it appears on the
 4 statements contained in the pleadings
 5 and everywhere else, it doesn't appear
 6 that Dalton Management is really keeping
 7 the books and records of these
 8 developments; is that not a fact?

9 A. No, that is not the fact.

10 Q. By the number of excessive
 11 journal entries and changes which Dalton
 12 Management appears not conversant with
 13 and not to really be interested in and
 14 which they don't amend their general
 15 ledgers concerning it would appear that
 16 the Dalton Management people have
 17 assumed and concluded that these records
 18 are being kept and maintained by Marks
 19 Paneth & Shron and not by Dalton in any
 20 respect; is that not a fact?

21 A. Not a fact.

22 Q. Now, you're not just saying that
 23 because Mr. Traub was shaking his head
 24 no, right?

25 A. I didn't even notice. We don't

1 W. H. Jennings 216

2 keep general ledgers. We don't keep
 3 accounts payable schedules. We don't
 4 keep tenant rent rolls. We do not keep
 5 paid bills. We do not approve bills.
 6 We don't sign checks.

7 Q. And it is not a fact that if we
 8 were to inquire into every building
 9 where Dalton exists, the fourteen or
 10 whatever the number is and where you
 11 audit for Dalton it is not a fact that
 12 we would find the same laissez faire, I
 13 don't really give a darn attitude in
 14 Dalton and that all issues and questions
 15 are going to be given to Marks Paneth &
 16 Shron for response; that is not a fact?

17 MR. TRAUB: Objection to form.
 18 It's argumentative. If you're
 19 going to characterize it as
 20 laissez faire and go completely
 21 against his testimony and records
 22 of the entire day then that's
 23 argumentative.

24 MR. HAYWOOD: That's why the
 25 witness said they were lazy. I

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1 W. H. Jennings 217
 2 sort of cleaned it up a little
 3 bit and said they were picking
 4 daffodils.
 5 MR. TRAUB: Not with regards
 6 to record keeping he did not,
 7 Mel. His comment, in matter of
 8 fact, and the court reporter can
 9 read it back, his comment that
 10 they were lazy was when the fact
 11 that rather than look for a
 12 document to produce to Cameron,
 13 Griffiths & Pryce that they refer
 14 them over to Marks Paneth &
 15 Shron. It certainly was not with
 16 respect to their bookkeeping, to
 17 their accounting, to their
 18 general ledger, maintenance or to
 19 making any recommendations or
 20 journal entries to the extent
 21 though that that was what you
 22 were implying.
 23 MR. HAYWOOD: Your argument
 24 is to the effect that Dalton had
 25 those books all along.

1 W. H. Jennings 218
 2 MR. TRAUB: I'm not making any
 3 argument. My argument is that
 4 your question is inappropriate.
 5 MR. HAYWOOD: But the case
 6 suggests a strong likelihood that
 7 they had none of it and didn't
 8 care.
 9 MR. TRAUB: Not only is that
 10 not the evidence but that's not
 11 what the testimony of today was.
 12 MR. KELLY: I join in the
 13 objection.
 14 MR. TRAUB: I have some
 15 questions if you're done.
 16 MR. HAYWOOD: You're going to
 17 redirect?
 18 MR. TRAUB: Yes, it's not my
 19 witness. I'm actually going to do
 20 direct. This is not my witness.
 21 EXAMINATION BY
 22 MR. TRAUB:
 23 Q. Mr. Jennings, I just have a few
 24 questions for you.
 25 You testified earlier that it is

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1 W. H. Jennings 219
 2 not unusual for a client to refer
 3 accounting or auditing questions to
 4 Marks Paneth & Shron; is that correct?
 5 A. That's correct.
 6 Q. Is it fair to say it's almost
 7 standard practice with some of your
 8 clients?
 9 A. Yes.
 10 Q. And I believe earlier you
 11 testified, and you'll correct my numbers
 12 --
 13 MR. HAYWOOD: My objection is
 14 to the leading nature of the
 15 question but go ahead.
 16 MR. TRAUB: He's not my
 17 witness. I can cross examine and
 18 lead him, Mel. You know the
 19 rules. This is not my witness.
 20 MR. HAYWOOD: I don't believe
 21 you can lead a codefendant but go
 22 ahead.
 23 MR. TRAUB: It's not my party.
 24 This is not my witness, Mel.
 25 Q. As a matter of fact, I believe

1 W. H. Jennings 220
 2 you testified that out of roughly 236 of
 3 your clients probably 200 would do
 4 something like this?
 5 A. Absolutely.
 6 MR. HAYWOOD: Well, note my
 7 objection because I don't recall
 8 that testimony at all but go
 9 ahead.
 10 Q. Was that your earlier testimony?
 11 A. Yes, I referred to how many
 12 clients I had, yes.
 13 Q. Thank you.
 14 Earlier you also testified that
 15 Marks Paneth & Shron receives roughly
 16 \$300,000 in retainer and you testified
 17 that it's large but not a substantial
 18 amount; is that correct?
 19 A. That's correct.
 20 Q. What would Marks Paneth & Shron
 21 consider to be a substantial amount?
 22 MR. KELLY: Objection. I'm
 23 instructing the witness not to
 24 answer. Their billings are not
 25 relevant to this.

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1 W. H. Jennings 221
 2 Q I'm not asking for a specific
 3 client, I'm not even asking for a
 4 specific retainer that you received but
 5 if you say that something is not
 6 substantial, what would you consider to
 7 be substantial?
 8 A I don't know if I used the word
 9 substantial. I might have said material
 10 to the firm as a whole. I would
 11 probably use \$800,000.
 12 Q If you can turn with me to
 13 Exhibit 4.
 14 MR. KELLY: I think that may
 15 be one that you took back, Mel,
 16 but I have a copy here that I'm
 17 willing to give the witness
 18 instead.
 19 MR. TRAUB: Thank you.
 20 Q Are you with me on Exhibit 4?
 21 A Yes.
 22 Q Can you turn to the second
 23 general paragraph, it's the 100
 24 accounting?
 25 A Yes.

1 W. H. Jennings 222
 2 Q Go with me to the fifth line item
 3 down, the one that's 2001 to 2004 tax
 4 analysis.
 5 A Uh-huh.
 6 Q Is it possible that that was tax
 7 analysis performed on the years 2001 and
 8 2004 that occurred either in 2005 or
 9 2006 and not necessarily tax analysis
 10 that was performed in 2001?
 11 MR. HAYWOOD: My objection
 12 is that anything is possible but go
 13 ahead.
 14 A It is possible, yes.
 15 Q Is that considered an auditing
 16 expense?
 17 A No.
 18 Q With respect to 2003 tax prep and
 19 I presume that's tax preparation, is
 20 that considered to be an auditing
 21 expense?
 22 A No.
 23 Q And if you go down to the next
 24 line July 5 through June of 2006,
 25 various PR. Is that considered an

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1 W. H. Jennings 223
 2 auditing expense?
 3 A You know, I have to be honest,
 4 it's cut off. I don't know.
 5 Q Is it possible that that's
 6 various tax projections?
 7 A Yes.
 8 MR. HAYWOOD: Objection that
 9 anything is possible.
 10 Q Would that be considered to be an
 11 auditing expense?
 12 A No.
 13 MR. HAYWOOD: Let me see if I
 14 can save time here. The witness
 15 was shown a bill of August 28,
 16 2002 which generated the money
 17 that you're talking about.
 18 MR. TRAUB: No, that's not
 19 correct. What that bill that you
 20 showed him --
 21 MR. HAYWOOD: It stated that
 22 it was billed in 2002.
 23 MR. TRAUB: No, that was my
 24 objection at that point. The
 25 bill you showed him was October

1 W. H. Jennings 224
 2 2000 through July, 2002 and that
 3 was \$15,000. That's not the line
 4 items that I pointed out.
 5 MR. HAYWOOD: Well, all
 6 right. You'll mark it into
 7 evidence as number 13 then.
 8 MR. TRAUB: My point is
 9 there's no way that it could have
 10 been because that line item is
 11 July '05 through June of '06, and
 12 again --
 13 MR. HAYWOOD: The witness
 14 answered this question and said
 15 yes.
 16 MR. TRAUB: No, Mel, he did
 17 not.
 18 Maybe this is kind of the
 19 issue that we have going for this
 20 is that the accounting questions
 21 were not accurate and that was my
 22 objection, as a matter of fact,
 23 when you did this specific
 24 question.
 25 Q With respect to the next one, the

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1 W. H. Jennings 225
 2 October 2000 through July 2002, various
 3 PR, is that an auditing expense?
 4 A This is the managing agent's
 5 description.
 6 Q Okay.
 7 A I have to -- I can't --
 8 Q Without looking at something
 9 different?
 10 A It is possible that I had nothing
 11 to do with this billing personally.
 12 Q What would you look at to
 13 determine what this actually refers to?
 14 A I'd have to look at the actual
 15 invoice.
 16 Q With respect to the next line
 17 item, IRS tax examination, would that be
 18 considered an auditing expense?
 19 A No, that was a three year tax
 20 examination.
 21 Q Were any of these items that
 22 you've just listed that were not
 23 auditing expenses performed at the
 24 request of John Edmonds?
 25 A I know one was, yes.

1 W. H. Jennings 226
 2 Q Which one was that?
 3 A The 2001 to 2004 tax analysis.
 4 Q The fact that all of these are
 5 appearing in the balance sheet and if
 6 you look under where the posted date,
 7 does that indicate the date that a check
 8 would have been paid or wired?
 9 A They're not on the balance sheet.
 10 Q I'm sorry, what is this?
 11 A The general ledgers.
 12 Q I'm sorry, the fact that these
 13 are in the general ledger and have a
 14 posted date does that reflect that these
 15 were actually payments made within 2006?
 16 A Yes, I believe so.
 17 Q So then the amount of \$108,525.45
 18 would not have been due and owed to
 19 Marks Paneth & Shron at the time that
 20 Marks Paneth & Shron did the auditing of
 21 the 2006 books; is that correct?
 22 A That's correct.
 23 MR. HAYWOOD: Objection.
 24 Q Mr. Haywood showed you earlier
 25 that there was a statement that \$15,000

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1 W. H. Jennings 227
 2 was still reflected as an invoice due
 3 from 2002. Did the fact that \$15,000
 4 may have been due to Marks Paneth &
 5 Shron influence or color your judgment
 6 or Marks Paneth & Shron's judgment with
 7 respect to its work or auditing
 8 performed for the management company or
 9 any of the projects in 2003?
 10 A Absolutely not.
 11 Q Same question for 2004.
 12 A Absolutely not.
 13 Q Same question for 2005.
 14 A Absolutely not.
 15 Q And same question for 2006.
 16 A Absolutely not.
 17 Q You also pointed out that you
 18 discovered an overage and at times some
 19 other problems during your auditing.
 20 When you discovered those overage or
 21 problems did you bring that to Dalton's
 22 attention?
 23 A Yes.
 24 Q Did you make recommendations on
 25 how to fix the issues that you

1 W. H. Jennings 228
 2 discovered?
 3 A We asserted that it must be paid
 4 back.
 5 Q Do you know whether or not it was
 6 paid back?
 7 A I don't know for a fact.
 8 Q Would you look somewhere to
 9 determine for a fact whether or not it
 10 was paid back?
 11 A It would have been a finding in
 12 question cost on the financial if it
 13 wasn't paid back and it might have been
 14 a finding in question cost even if it
 15 wasn't paid back, the fact that it
 16 occurred.
 17 Q And did that occur with respect
 18 to the issue Church the \$39,000 that we
 19 pointed out I believe in Exhibit 9, in
 20 other words, with the overcharges you
 21 found reflected in Exhibit 9, you made
 22 recommendations on how to rectify the
 23 overage payments?
 24 A If we discovered it during audit
 25 and at that point of discovery we would

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1 W. H. Jennings 229
 2 compile it in a management letter and or
 3 make an assertion in the internal
 4 control portion of the financial
 5 statements.
 6 Q After you do an audit and you
 7 make certain recommendations on
 8 reclassification of general ledger
 9 items, does that reclassification change
 10 or affect the bottom line in any way?
 11 A It may.
 12 Q What do you mean, "it may." In
 13 what circumstance would it?
 14 A In the circumstance of real
 15 estate taxes or water and sewer. If
 16 there was a payment made December 31st
 17 that really pertains to the prospective
 18 period that would be a proposed journal
 19 entry to reclass to prepaid expenses.
 20 Q Do you know if any such
 21 reclassification with respect to the
 22 example that you just gave occurred with
 23 any of the partnerships or Dalton
 24 Management?
 25 A It's possible and those payments

1 W. H. Jennings 230
 2 are a matter of public record because
 3 it's on the Internet.
 4 Q But with the reclassifications
 5 that we saw today, in other words,
 6 changing auditing to management or
 7 changing without giving any specifics
 8 some of the changes referred on
 9 Plaintiff's Exhibit 5, would any of that
 10 affect the bottom line?
 11 A You have to look at the specific
 12 journal entries. Like the one that we
 13 referred to when we were talking about,
 14 when we got into the discussion about
 15 shoes, that had no effect on the profit
 16 and loss, the bottom line.
 17 Q What about the changing of fee
 18 that was listed as audit to management
 19 consultant fee; would that have changed
 20 the bottom line?
 21 A No effect on the bottom one.
 22 Q If no one went back and
 23 reclassified the general ledger items
 24 pursuant to Marks Paneth & Shron's
 25 recommendations and instructions and yet

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1 W. H. Jennings 231
 2 they were still given the financial
 3 statements that showed where the
 4 suggestions and instructions came from,
 5 could you perform an audit on the books
 6 and records?
 7 MR. KELLY: I'm going to
 8 object to the extent that the
 9 question had recommendations and
 10 instructions and provided that
 11 instructions is removed from the
 12 question, I'll let the question
 13 stand.
 14 MR. TRAUB: I'll restate it.
 15 Q You've testified earlier that
 16 sometimes when going through the audit
 17 that Marks Paneth & Shron would make
 18 recommendations as to reclassifications
 19 of certain general ledger items; is that
 20 correct?
 21 MR. HAYWOOD: Mr. Traub,
 22 we're going beyond the scope of
 23 any redirect of what I did. Is
 24 this your examination?
 25 MR. TRAUB: This is exactly

1 W. H. Jennings 232
 2 what your questions were. This
 3 is directed directly to you --
 4 MR. HAYWOOD: You can go on
 5 for another hour and a half if
 6 you want but this should be your
 7 examination then.
 8 MR. TRAUB: I'm entitled to
 9 ask this witness questions.
 10 MR. HAYWOOD: Go ahead.
 11 MR. TRAUB: Thank you.
 12 Q Even if the general ledger items
 13 had not been made pursuant to Marks
 14 Paneth & Shron's recommendations is it
 15 still possible to conduct an audit on
 16 the books and records of the company?
 17 A It's a confusing question.
 18 Q Let me ask you in another way.
 19 Marks Paneth & Shron made certain
 20 recommendations as to changes of general
 21 ledger items. If those
 22 reclassifications did not occur in the
 23 actual general ledger but someone
 24 conducting an audit had, say, for
 25 example, the financial statement

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1 W. H. Jennings 233

2 reflected in Plaintiff's Exhibit 5 and
3 similar documents showing where the
4 recommendations were, could one still
5 conduct an audit?

6 A Yes.

7 Q And you testified earlier that
8 you had had discussions with Cameron,
9 Griffiths & Pryce about some of the
10 various letters and question that they
11 had directed to at first Dalton
12 Management and then Marks Paneth & Shron
13 and you even had invited, I believe,
14 Oriley to talk to you. Did he ever take
15 you up on that offer?

16 A No.

17 Q In your opinion had they taken
18 you up on that offer do you think that
19 you could have walked them through some
20 of their --

21 MR. HAYWOOD: Objection.
22 Speculative.

23 Q -- questions and answers?

24 A Absolutely.

25 Q Do you or anyone at Marks Paneth

1 W. H. Jennings 234

2 & Shron make any management decisions
3 for either Dalton Management or the four
4 partnerships at issue here?

5 A Absolutely not.

6 Q Are you or anyone at Marks Paneth
7 & Shron employed by either Dalton Management
8 or the four partnerships at issue here?

9 A No.

10 Q Are you or are anyone at Marks Paneth & Shron an officer or director or manager of either Dalton Management or any of the four companies at issue here?

11 A No.

12 Q Has anyone at Dalton Management or either of the four partnerships ever asked you or anyone at Marks Paneth & Shron to forge, doctor or otherwise interface fraudulent information into an audit or the books and records of any of the partnerships?

13 A No, not to my knowledge.

14 Q Have you or anyone at Marks Paneth & Shron, to your knowledge, ever

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1 W. H. Jennings 235

2 suggested or volunteered that you would
3 cook, doctor or forge some of the books?

4 A Absolutely not.

5 Q Are you aware of any monies or
6 payments that are funneled through
7 Dalton Management, say, out of these
8 four partnerships into any other
9 companies?

10 A No.

11 MR. TRAUB: I have nothing
12 further.

13 FURTHER EXAMINATION BY

14 MR. HAYWOOD:

15 MR. HAYWOOD: I'll have this
16 marked as Exhibit 13. I showed
17 it to you before.

18 (A bill from Marks Paneth &
19 Shron dated 8/28/02 was marked
20 as Plaintiff's Exhibit 13 for
21 identification, as of this
22 date.)

23 Q Let me show you Exhibit 13 for
24 identification which is the bill from
25 Marks Paneth & Shron of August 28, 2002.

1 W. H. Jennings 236

2 that I referred you to in your previous
3 testimony which indicated that the
4 monies which were paid in 2006 were in
5 fact billed by Marks Paneth & Shron on
6 August 28, 2002; do you recall looking
7 at this previously, sir?

8 A Yes.

9 Q And it is a fact that whatever is
10 reflected in that bill was billed in
11 2002; is that correct?

12 A It appears so, yes.

13 Q And that it wasn't until 2006
14 without regard to accruing money and
15 what not that the actual money was paid
16 to Marks Paneth & Shron; is that
17 correct?

18 A It appears so, yes.

19 Q And now, finally, was this money
20 accrued in 2002 in the report?

21 A No.

22 Q Is there a reason why it wasn't
23 accrued?

24 A It could have been several
25 reasons. It could have been overlooked,

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1 W. H. Jennings 237
 2 it's below materiality limit that we
 3 set, Fifth and 106th Street has a much
 4 higher materiality limit, it could have
 5 been billed by another partner who set
 6 up a separate account if they were
 7 performing other services. There are
 8 several possibilities.

9 Q Now, you have a minimum of
 10 fourteen and possibly more developments
 11 in which Marks Paneth & Shron or Mr.
 12 Shron in his life alone have represented
 13 the Seavey group since 1973 or
 14 thereabout and you say that the total
 15 income from all of those developments is
 16 \$300,000?

17 MR. KELLY: Objection.

18 Total income since 1973?

19 MR. HAYWOOD: No.

20 Q Presently it's \$300,000 for all
 21 of those developments?

22 A Approximately.

23 Q From all fourteen or possibly the
 24 others where you're servicing the
 25 Seaveys \$300,000?

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1 W. H. Jennings 238

2 A That sounds about right.
 3 Q It isn't in excess of \$500,000?
 4 A I don't believe so.
 5 Q Is there any other client that
 6 you have that you're defending fourteen
 7 to fifteen to sixteen large housing
 8 developments for that you're servicing?

9 A Yes.

10 Q You as a partner?

11 MR. KELLY: I'm going to
 12 caution the --

13 Q Do you have any other clients --
 14 MR. KELLY: I'm going to
 15 caution the witness not to
 16 divulge any confidential
 17 information about specific
 18 clients but he may answer the
 19 question in a general sense.

20 Q I don't need to know the name or
 21 the name of any fifteen of them but how
 22 many such clients do you have that have
 23 sixteen, seventeen developments, you
 24 individually as a partner?

25 A That I review that have fifteen

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1 W. H. Jennings 239
 2 or sixteen. I know of at least one;
 3 There are quite a few others but they're
 4 not fifteen or sixteen.

5 Q So nobody else as large?

6 A I have larger accounts.

7 Q There may be one.

8 A I have larger accounts but
 9 they're --

10 Q Well, as these accounts go, this
 11 is a large and substantial account;
 12 isn't it?

13 MR. KELLY: Objection.

14 Misstates prior testimony.

15 Q As these accounts go, this is a
 16 large and substantial account; is it
 17 not?

18 MR. KELLY: Same objection.

19 A To the firm or to me personally?

20 Q To you personally.

21 A Not particularly. I have
 22 \$3,000,000 worth of billings.

23 Q And the account then is not of
 24 such a nature that your servicing of it
 25 in so many ways for so long a time might

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1 W. H. Jennings 240

2 impair your individual action in terms
 3 of the service being provided?

4 A You don't know me very well.
 5 Absolutely not. I have a higher
 6 authority to deal with...

7 Q And the amount of money generated
 8 by this firm and by the individuals and
 9 I'm assuming now that the billings we're
 10 talking about are not just the service
 11 contracts or the audits but all the
 12 accessory things that you do for these
 13 buildings, that amount of money could
 14 not persuade you to provide the auditing
 15 services and the accounting services for
 16 these developments?

17 A Can you repeat that?

18 Q I said that the large amount of
 19 money involved doesn't tempt Marks
 20 Paneth & Shron, you and your associates,
 21 to perform the accounting services as
 22 well as the auditing services on these
 23 buildings?

24 A I swear to God on my children,
 25 absolutely not.

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1 W. H. Jennings 241
 2 Q Well, God and your children not
 3 being a part of this --
 4 A You know, you've asked it three
 5 times. I answered you three times. You
 6 are questioning my integrity and I take
 7 exception to that. I said absolutely
 8 not. We're a \$96 million firm. I have
 9 been a partner. I have been with the
 10 firm for thirty one years and my
 11 reputation is much more important to me
 12 than any accounting fees. I would
 13 rather walk away from a job, which I've
 14 done several times, if there was any
 15 defalcation of integrity issue. I do a
 16 lot of volunteer work, okay. I save a
 17 lot of people's lives, okay, a lot of
 18 people's lives pro bono and I take pride
 19 in my integrity.
 20 Q On the GAGAS, sir?
 21 A That is what I am about.
 22 Q On the GAGAS wouldn't it be wise
 23 for Marks Paneth & Shron to walk away
 24 from these accounts for a little time
 25 under the GAGAS provisions?

1 W. H. Jennings 242
 2 A No.
 3 MR. HAYWOOD: No further
 4 questions.
 5 MR. KELLY: I'm just going to
 6 clarify something that was
 7 brought up on your questioning.
 8 EXAMINATION BY
 9 MR. KELLY:
 10 Q Referring to Exhibit 13, do you
 11 see the date of this invoice?
 12 A Yes.
 13 Q What's the date of this invoice?
 14 A August 28, 2002.
 15 Q And on the last page of this
 16 exhibit do you see the entries for the
 17 totals, the first one being \$115,000?
 18 A Yes.
 19 Q Do you see the two entries below
 20 that?
 21 A Yes.
 22 Q Do you see that those two entries
 23 are in brackets?
 24 A Yes.
 25 Q What do those brackets mean?

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1 W. H. Jennings 243
 2 A Credits.
 3 Q What do you mean by credits?
 4 A I don't know. It's not detailed.
 5 Q When you say, "credits," do you
 6 mean that it either this amount was paid
 7 or some other event happened such that
 8 that amount was no longer due?
 9 A First of all, this bill doesn't
 10 add up \$115,000.
 11 Q I'll represent to you we've taken
 12 out the middle pages to be as of
 13 reference.
 14 A Oh, okay. I can't say. I'd have
 15 to look at the original documentation if
 16 we still have it when I was billed back
 17 in 2002.
 18 MR. HAYWOOD: If the witness
 19 wishes to amend this record upon
 20 consulting his own files, I have
 21 no problem.
 22 Q And the bottom line number on
 23 this exhibit of \$15,000, does that mean
 24 in accordance with this invoice \$15,000
 25 was due?

1 W. H. Jennings 244
 2 A Yes.
 3 Q It does not mean \$115,505 is due
 4 as one of the numbers above that
 5 indicates?
 6 A That's correct.
 7 MR. KELLY: I have no further
 8 questions.
 9 MR. TRAUB: I just have one
 10 quick follow up.
 11 FURTHER EXAMINATION BY
 12 MR. TRAUB:
 13 Q When I asked you whether or not
 14 if \$15,000 on the book colored your
 15 judgment in 2003, 4, 5 and 6 and you
 16 testified, "no," you were understanding
 17 I was referring to this \$15,000 that was
 18 showed to you earlier; is that correct?
 19 MR. HAYWOOD: Objection to
 20 the fact that it's leading and
 21 suggesting and based on the facts,
 22 the payment was \$105,000 and some
 23 portion of it was billed in 1982
 24 and that carried over.
 25 Q You can still answer my questions

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1 W. H. Jennings 245
 2 since that had nothing to do with it.
 3 Did you understand that when I.
 4 asked you whether \$15,000 being on the
 5 books and records from 2003 through 2006
 6 would color your judgment you understood
 7 that I was referring to this \$15,000; is
 8 that correct.
 9 A I didn't understand that, no,
 10 but, yes, that could not.
 11 Q Thank you.
 12 MR. HAYWOOD: Whereupon, the
 13 deposition of this witness has
 14 concluded.
 15 MR. EDMONDS: Except with my
 16 counsel's permission I would like
 17 to ask one or two questions of
 18 Mr. Jennings.
 19 MR. HAYWOOD: I will
 20 certainly consent. He is an
 21 attorney.
 22 MR. TRAUB: Is he an attorney
 23 of record in this case though?
 24 MR. HAYWOOD: He is a party.
 25 MR. KELLY: That doesn't make

1 W. H. Jennings 246
 2 him entitled to ask questions of
 3 a defendant.
 4 Off the record.
 5 (Whereupon, a brief discussion
 6 was held off the record.)
 7 MR. KELLY: Mr. Edmonds has
 8 asked to ask the witness
 9 questions. I have agreed to
 10 listen to the question on the
 11 condition that my previous
 12 stipulation regarding holding
 13 objections is suspended during
 14 this brief examination and I
 15 again, counsel my witness to wait
 16 until I have a chance to hear the
 17 question before answering.
 18 MR. EDMONDS: Does the
 19 accounting firm that you are a
 20 partner in prepare annual tax
 21 returns for Robert Seavey or any
 22 member of the Seavey family or
 23 ABNS Corporation, that is annual
 24 tax returns, both the federal,
 25 state and the city?

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1 W. H. Jennings 247
 2 MR. KELLY: I'll let the
 3 witness answer that question.
 4 THE WITNESS: We have nothing
 5 to do with Phyllis Seavey's
 6 personal return. We have nothing
 7 to do with Robert Seavey's
 8 personal return. We have nothing
 9 to do with the Seavey and Seavey
 10 organization. We have nothing to
 11 do with Neale Seavey's personal
 12 return. The only personal return
 13 that I prepared is Avery Seavey
 14 and that's only in the last two
 15 years because he developed a
 16 construction company.
 17 MR. EDMONDS: When you say,
 18 personal return of Avery Seavey,
 19 is it under the caption or under
 20 the name of the firm ABNS
 21 Corporation?
 22 THE WITNESS: No.
 23 MR. EDMONDS: Just it's under
 24 the name Avery Seavey?
 25 THE WITNESS: Yes, that's

1 W. H. Jennings 248
 2 correct. Only because I've only
 3 been doing him the last two
 4 years.
 5 MR. EDMONDS: Thank you very
 6 much.
 7 MR. HAYWOOD: Whereupon the
 8 deposition is concluded.
 9 -000-
 10 (Whereupon, the examination of
 11 William H. Jennings was concluded
 12 at 5:19 p.m.)
 13
 14 WILLIAM H. JENNINGS
 15
 16 Subscribed and sworn to
 17 before me this _____ day
 18 of _____, 2009.
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I N D E X

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REQUESTS FOR PRODUCTION

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C E R T I F I C A T E

I, SIMA D. LOWY, a Reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness(es) whose testimony is hereinbefore set forth was duly sworn by me, and the foregoing transcript is a true record of the testimony given by such witness(es).

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

SIMA D. LOWY

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ERRATA SHEET

The following are my corrections to the attached transcript:

PAGE LINE SHOULD READ

THE SHAW SHOALS Road

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